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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/956,925	09/21/2001	Hideaki Yagi	Q66253	2471

7590 10/19/2005

SUGHRUE MION ZINN MACPEAK & SEAS, PLLC
2100 Pennsylvania Avenue, NW
Washington, DC 20037-3213

EXAMINER

LEWIS, AARON J

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/956,925

Applicant(s)

YAGI ET AL.

Examiner

AARON J. LEWIS

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06/28/2005 (AMENDMENT).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,8-10,12,14-22,24-28,30 and 32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,5,6,8,15,17,19,21,25,27 and 30 is/are allowed.
- 6) ☒ Claim(s) 9,10,12,14,16,18,20,22,24,26,28 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 9,10,12,14,16,18,20,22,24,26,28,32 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of copending Application No. 09/957,030 in view of Davenport ('945).

This is a provisional obviousness-type double patenting rejection.

The difference between claim 9 of application ('030) and claim 9 of the instant application is an oxygen outlet for supplying the oxygen enriched gas to an inhalator of the user, and a breath detection port provided separately from the oxygen outlet and connected to the inhalator for detecting the user's state of breathing.

Davenport teaches an oxygen outlet (20) for supplying the oxygen enriched gas to an inhalator of the user, and a breath detection port (26) provided separately from the oxygen outlet and connected to the inhalator for detecting the user's state of breathing for the purpose of minimizing wastage of oxygen (col.2, lines 36-43).

It would have been obvious to modify the oxygen supply apparatus as defined by claim 9 of application ('030) to include a separate oxygen outlet and breath detection port because it would have provided a means for minimizing wastage of oxygen as taught by Davenport.

3. Claims 9,10,12,14,16,18,20,22,24,26,28,32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,837,244 in view of Davenport ('945).

The difference between patent claim 4 and claim 9 of the instant application is an oxygen outlet for supplying the oxygen enriched gas to an inhalator of the user, and a breath detection port provided separately from the oxygen outlet and connected to the inhalator for detecting the user's state of breathing.

Davenport teaches an oxygen outlet (20) for supplying the oxygen enriched gas to an inhalator of the user, and a breath detection port (26) provided separately from the oxygen outlet and connected to the inhalator for detecting the user's state of breathing for the purpose of minimizing wastage of oxygen (col.2, lines 36-43).

It would have been obvious to modify the oxygen supply apparatus as defined by patent claim 1 to include a separate oxygen outlet and breath detection port because it would have provided a means for minimizing wastage of oxygen as taught by Davenport.

Allowable Subject Matter

4. Claims 1,5,6,8,15,17,19,21,25,27,30 are allowed.

Response to Arguments

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5. Applicant's arguments with respect to claims 9,10,12,14,16,18,20,22,24,26,28,32 have been considered but are moot in view of the new ground(s) of rejection.

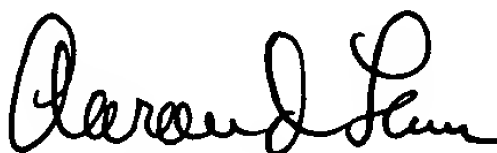
Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant nasal cannulae having an oxygen outlet and separate breath detection port.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (571) 272-4795. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


AARON J. LEWIS
Primary Examiner
Art Unit 3743

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Aaron J. Lewis
October 15, 2005